

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	
STATE OF OKLAHOMA;	)	Civil Action No.
OKLAHOMA STATE ELECTION	)	
BOARD; and MICHAEL CLINGMAN,	)	
as Secretary of the	)	
Oklahoma State Election	)	
Board,	)	
	)	
Defendants.	)	

**COMPLAINT**

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff to 1973ff-6 ("UOCAVA" or "the Act"), which provides, inter alia, that absentee uniformed services voters and overseas voters shall be permitted "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1. This action is brought to ensure that United States citizens living abroad, who are qualified to vote in the September 17, 2002, federal primary runoff election of the State of Oklahoma, and who have filed timely applications for absentee ballots, will have

their ballots counted.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345.

3. The Defendant State of Oklahoma is charged with the responsibility of assuring that Oklahoma election laws, as applied, comply with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff to 1973ff-6.

4. Defendant Oklahoma State Election Board is an agency of the State of Oklahoma with general authority to regulate elections in the State of Oklahoma. It has the authority to certify the results of primaries and elections for state and federal office.

5. Defendant Michael Clingman is sued in his official capacity as Secretary of the Oklahoma State Election Board. In that capacity he has supervisory authority over Oklahoma's county election boards, and ultimate responsibility for the administration of Oklahoma's laws affecting voting.

6. In the September 17, 2002, federal primary runoff election, the voters of the State of Oklahoma will select or participate in the selection of nominees for, inter alia, the office of United States Senator.

7. County election officials of the State of Oklahoma have received timely requests for absentee ballots from overseas voters, who are entitled to vote pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

8. Under Oklahoma law, absentee ballots received after

7:00 p.m. on the date of the election are rejected.

9. In order to allow overseas citizens a fair opportunity to vote by absentee ballot, election officials in Oklahoma must mail the ballots to the voters on a date sufficiently in advance of election day to allow the voter to receive the ballot, cast his or her vote, and return the ballot to the office of the election official by the deadline established by state law (7:00 p.m. on election day). The United States Postal Service estimates that a period of 10 to 14 days is a reasonable benchmark from the time of posting to the time of delivery of international mail, and that a period of 20 to 28 days is a reasonable benchmark for a round trip if the addressee responds on the day he or she receives the letter. The United States Department of State has estimated that 10 to 14 days is a reasonable one-way international mail delivery benchmark. The United States Military Postal Service Agency estimates that approximately 30 days are necessary for mail to military personnel to make a complete round trip to and from overseas locales. This estimate takes into account the fact that some military personnel are stationed in remote areas.

10. Election officials in Oklahoma could not mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of the September 17, 2002, primary runoff election to allow such voters to receive the ballot, cast a vote, and return the ballot to election officials by the deadline established by state law (7:00 p.m. on election day).

11. The failure of county election authorities in Oklahoma to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of September 17, 2002, to allow the casting and return of ballots by the deadline established by state law, will deprive United States citizens of an opportunity to vote in the September 17, 2002, federal primary runoff election contrary to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

12. The failure of Oklahoma state law to provide sufficient time between primary and primary runoff elections for the mailing and return of absentee ballots to and by military and civilian overseas voters, without relief from the deadline for counting of such ballots or other relief from the operation of state election law as to such voters, fails to protect the rights of such voters under the Uniformed and Overseas Citizens Absentee Voting Act. This circumstance has resulted in emergency litigation and court-ordered relief on two previous occasions. See United States v. State of Oklahoma, No. Civ-99-1444-P (W.D. Okla., complaint and proposed consent decree filed, and consent decree entered, Aug. 22, 1988); United States v. State of Oklahoma, No. Civ-98-1271-W (W.D. Okla., complaint and proposed consent decree filed Sept. 15, 1998, consent decree entered Sept. 17, 1998).

13. An order of this Court is necessary requiring election officials of the State of Oklahoma to take corrective action in order to protect the rights granted by the Uniformed and Overseas Citizens Absentee Voting Act in this and future elections.

WHEREFORE, plaintiff prays that this Court hear this action pursuant to 42 U.S.C. 1973ff-4 and 28 U.S.C. 1345, and thereafter issue a judgment enjoining the defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to take such steps as are necessary to ensure that persons outside the United States who are qualified to vote in the State of Oklahoma pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff-1, and who satisfy the requirements of Oklahoma law for absentee voting in the September 17, 2002, federal primary runoff election, are able to cast ballots in this election despite the late mailing of ballots to those voters by county election officials;
- (2) to take such steps as are necessary to afford military and civilian overseas voters eligible to participate in the September 17, 2002, federal primary runoff election under the Uniformed and Overseas Citizens Absentee Voting Act a reasonable opportunity to learn of this Court's order;
- (3) to provide a report to the United States concerning the number of military and other overseas ballots received and counted for the September 17, 2002, primary runoff election; and

(4) to take such steps as are necessary to afford military and civilian overseas absentee voters eligible to vote in Oklahoma under the Uniformed and Overseas Absentee Voting Act a fair and reasonable opportunity to participate in future runoff elections for federal office.

The United States of America further prays that this Court order such other relief as the interests of justice may require.

Respectfully submitted,

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Attorneys for Plaintiff  
United States of America

Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of September, 2002, I caused a copy of the foregoing Complaint to be delivered by hand to counsel for the defendants, Janis W. Preslar, Esq., Office of the Oklahoma Attorney General, 4545 N. Lincoln Blvd., Suite 260, Oklahoma City, OK 73105.

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